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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 HERIBERTO TORIBIO-RUIZ,

Case No. 3:14-cv-00492-MMD-WGC

7 Petitioner,

ORDER

8 v.

9 ISIDRO BACA, *et al.*,

10 Respondents.
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12 The Court has considered Petitioner's motion to reopen (ECF No. 68) and
13 Respondents' response (ECF No. 70).

14 Good cause appearing, it is therefore ordered that the motion to reopen (ECF No.
15 68) is granted. The Clerk of the Court will reopen this action and lift the stay.

16 It is further ordered that Respondents must file a response to the second amended
17 petition (ECF No. 31), including potentially by motion to dismiss, within 60 days of service
18 of an amended petition and that Petitioner may file a reply within 30 days of service of an
19 answer. The response and reply time to any motion filed by either party, including a motion
20 filed in lieu of a pleading, will be governed instead by LR 7-2(b).

21 It is further ordered that any procedural defenses raised by Respondents to the
22 counseled second amended petition must be raised together in a single consolidated
23 motion to dismiss. In other words, the Court does not wish to address any procedural
24 defenses raised herein either in serial fashion in multiple successive motions to dismiss
25 or embedded in the answer. Procedural defenses omitted from such motion to dismiss will
26 be subject to potential waiver. Respondents must not file a response in this case that
27 consolidates their procedural defenses, if any, with their response on the merits, except
28 pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If

1 Respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they must
2 do so within the single motion to dismiss not in the answer; and (b) they must specifically
3 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett*
4 *v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
5 including exhaustion, will be included with the merits in an answer. All procedural
6 defenses, including exhaustion, instead must be raised by motion to dismiss.

7 It is further ordered that, in any answer filed on the merits, Respondents must
8 specifically cite to and address the applicable state court written decision and state court
9 record materials, if any, regarding each claim within the response as to that claim.

10 DATED THIS 4th day of November 2019.

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MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE
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